THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.15986 OF 2007
DATED: 31 -12-2007

1.The Government of Andhra Pradesh,
represented by its Secretary, Prohibition
and Excise, Secretariat Buildings, Hyderabad.

2. The Commissioner of Prohibition & Excise,
Government of A.P., M.J. Road, Hyderabad.

3.The Deputy Commissioner of Prohibition
and Excise, Warangal.

... Petitioners

versus

Syed Shabir Pasha, Head Constable
Prohibition & Excise, Singareni Station,
Khammam District and permanent
R/o 5-2-219/3, Mustafa Nagar, Khammam.

... Respondent

ORDER: (per the HON'BLE SRI JUSTICE K.C.BHANU)

This Writ Petition is filed to issue a writ of *Certiorari* calling for the records in O.A. No.7720 of 2006 on the file of the A.P. Administrative Tribunal, Hyderabad, (for brevity 'the Tribunal') and quash or set aside the order therein, dated 21.02.2007.

2. The brief facts that are necessary for disposal of the present Writ Petition, may be stated as follows:

The Government of Andhra Pradesh issued G.O.Ms.No.165, dated 22-04-1997, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India,

exempting from passing departmental test, insofar as the incumbents who have completed 45 years of age for the next promotion. Subsequently, the same was re-considered in G.O.Ms.No.225, General Administration (Services-C) Department, dated 18-05-1999, whereunder and whereby Rule 11(b) of the A.P. Prohibition & Excise Subordinate Service Rules, 1998, was relaxed eternally. The applicant said to have made a representation to consider his case for promotion to the higher post viz. Prohibition and Excise Sub Inspector, but the concerned authorities were bent upon to promote the juniors. It is further stated that the Tribunal held that the relaxation can be made, even in the case of second promotion and hence, he filed the O.A.

3. The respondents in the O.A. filed counter stating that the applicant has not passed requisite departmental test as prescribed under the rules and therefore, he is not eligible for promotion as Prohibition and Excise Sub Inspector as per the Ad hoc Rule amended. G.O.Ms.No.225, General Administration (Services-C), Department, dated 18-05-1999, applies only to the persons who could not get one promotion, after their initial appointment. Therefore, the applicant is not eligible for exemption from passing departmental test for promotion to the post of the Prohibition and Excise Sub Inspector.

4. The Tribunal, by its impugned order, dated 21-02-2007 allowed the O.A. in terms of the order in O.A. 68 of 2007 and batch, dated 15-02-2007, directing the respondents to consider the case of the applicant for promotion, if he is in the zone of consideration, along with seniors. Challenging the same,

the present Writ Petition is filed.

5. Learned Government Pleader for Services II contended that the respondent herein was initially given promotion as Prohibition and Excise Head Constable on 09-07-1984, that exemption from passing the requisite departmental tests cannot be given for promotion to the next promotion post, that the matter is squarely covered by the decision of this Court in W.P.No.4337 of 2007, dated 18-07-2007 and hence, he prays to allow the Writ Petition.

6. None appears for the respondent, in spite of service of notice.

7. When the Tribunal order is vitiated by the error of law apparent on the face of the record, Writ of *Certiorari* can be issued. We are conscious of the fact that the object of *Certiorari* is to keep the exercise of powers by inferior Judicial and Quasi Judicial Tribunals within the limits of jurisdiction assigned to them by law and to restrain them from acting in excess of their authority.

8. It is not in dispute before this Court that the respondent herein was initially appointed as Prohibition and Excise Constable on 12-05-1974. Thereafter, he was promoted as Head Constable on 09-07-1984. The next category of promotion from the category of Head Constable is Prohibition and Excise Sub Inspector. Rule 5 of A.P. Prohibition and Excise Subordinate Service Rules, 1998, prescribes passing of certain departmental tests as prescribed thereunder. Admittedly, the respondent herein did not pass the requisite departmental tests to become eligible for promotion to the

next higher post i.e. Prohibition and Excise Sub Inspector. Relevant *ad hoc* Rule in G.O.Ms.No.225, dated 18.05.1999 issued by the General Administration (Services-C), Department reads as follows:

> "Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or in the Special Rules or in ad hoc rules, the Government Employees who have crossed 45 (forty five) years of age shall be exempted from passing the departmental tests prescribed in the special rules of the ad hoc rules for the purpose of promotion to the next higher category i.e, promotion or appointment by transfer involving promotion to a post above the one held, by him or her, if they could not get even one promotion after their initial appointment.
>
> Provided that the persons who already got a promotion once where no tests are prescribed for the higher post, the exemption is not applicable to him or her if he or she is to be considered for further promotion to next higher category where tests are prescribed (This ad hoc rule is applicable from the panel year 1997-98).
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> Provided further that the exemption is applicable in case of departmental tests or special tests only, where they are prescribed as a pre-requisite for promotion and this exemption shall not be applicable where like technical or academic qualifications are prescribed for promotion to the next higher category of posts."

From the above Rule, it is clear that it applies to all the posts whether selection grade or non-selection grade. The above Rule is also clear that exemption can be granted from passing the departmental tests only in case where the incumbent could not get his promotion after his initial appointment. It also clearly indicates that the exemption shall not be applicable where technical or academic qualifications are prescribed for promotion

to the next higher category posts.

9. As per Rule 5 of the A.P. Prohibition and Excise Subordinate Service Rules, 1998, for the post of Prohibition and Excise Sub Inspector, the Government has prescribed passing of the following tests:

> "1) Test-A: Civil and Criminal law:- To make the Prohibition and Excise Sub-Inspector develop knowledge on detection, investigation and successful prosecution of crimes.
>
> 2) Test-B: Excise Acts & Rules:- To make the Prohibition & Excise Sub-Inspector acquire full knowledge on dealing with the Excise crimes and the section under which the case has to be registered.
>
> 3) Test–C: Technical Excise Manual:- This is to make the Prohibition & Excise Sub-Inspector acquire knowledge regarding the Manufacture, Blending etc., of spirit.
>
> 4) Test-D: Distillery Manual:- This is to make the Prohibition & Excise Sub-Inspector acquire regarding knowledge on the functioning of a distillery and duties to be performed there in."

10. Admittedly, the respondent herein did not pass requisite departmental tests for his promotion to the post of Prohibition & Excise Sub Inspector. He already availed one promotion as Prohibition and Excise Head Constable, on 09-07-1984, whereas his initial appointment was on 12-05-1974 as Prohibition and Excise Constable. So, a person who crossed 45 years of age shall be exempted from passing the requisite departmental test for his promotion, if he could not get even one promotion after his initial appointment. On this aspect, it is pertinent to refer a Full Bench decision of this Court in

W.P.No.4337 of 2007, dated 18.07.2007 between **GOVERNMENT OF A.P. & ANOTHER AND M.VENKATESWARLU,** wherein it was held as follows:

> "In the result, we answer the reference holding that the first proviso to the ad hoc rule notified in G.O.Ms.No.225, dated 18-05-1999,restricting the benefit of exemption, only to those who have not been promoted even once after their initial appointment in public service, would apply both to selection and non-selection posts and the contrary view expressed by the Division Bench in *Rednam Satyanarayana Murthy Vs The District Tribal Welfare Officer, East Godavari District*, does not lay down correct law."

11. So from the above decision, it is clear that the *ad hoc* rule notified in G.O.Ms.No.225, dated 18-05-1999 would apply to both selection and non-selection posts. In view of the Full Bench judgment, the decision in Rednam Satyanarayana Murthy V The District Tribunal Welfare Officer, East Godavari District in W.P.No.24912 of 2005, dated 22-02-2006, is no longer correct law. The Tribunal allowed O.A.No.68 of 2007 and batch, dated 15-02-2007, by following the Division Bench judgment of this Court. Hence, there is an error of law apparent on the face of record in allowing the impugned O.A., calling for interference by this Court, and hence the impugned order is liable to be set aside.

12. Accordingly, the Writ Petition is allowed, setting aside the impugned order of the A.P. Administrative Tribunal, Hyderabad, dated 21-02-2007 in O.A.No.7720 of 2006. There shall be no order as to costs.

JUSTICE D.S.R.VARMA

JUSTICE K.C.BHANU

DATED:31-12-2007

Hsd